ORIGINAL

NAME
BRUCE ALLEN
PRISON NUMBER
#C-61243

CURRENT ADDRESS OR PLACE OF CONFINEMENT
P.O. BOX 5005, FB01-113

CITY, STATE, ZIP CODE
CALIPATRIA, CALIFORNIA 92233
In Pro Per

2254 ✓ 1983
FILING FEE PAID
Yes ✓ No
IFP MOTION FILED
Yes No ✓
COPIES SENT TO
Court ✓ ProSe

FILED
JUN 24 2008
CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY DEPUTY

# UNITED STATES DISTRICT COURT
## SOUTHERN DISTRICT OF CALIFORNIA

(FULL NAME OF PETITIONER)
BRUCE ALLEN , PETITIONER

v.

(NAME OF WARDEN, SUPERINTENDENT, JAILOR, OR AUTHORIZED PERSON HAVING CUSTODY OF PETITIONER [E.G., DIRECTOR OF THE CALIFORNIA DEPARTMENT OF CORRECTIONS])

JAMES TILTON , RESPONDENT

and

JERRY BROWN ,
The Attorney General of the State of California, Additional Respondent.

Civil No '08 CV 1123 L CAB
(TO BE FILLED IN BY CLERK OF U.S. DISTRICT COURT)

## PETITION FOR WRIT OF HABEAS CORPUS

UNDER 28 U.S.C. § 2254
BY A PERSON IN STATE CUSTODY

1. Name and location of the court that entered the judgment of conviction under attack: "Petitioner is challenging the "retroactive repeal" of a California statute by the California Board of Parole Hearings (BPH), as applies to him."
2. Date of judgment of conviction: January 11, 1983.
3. Trial court case number of the judgment of conviction being challenged: N/A
4. Length of sentence: Life without possibility of parole (LWOP).

CR

5. Sentence start date and projected release date: February 22, 1983. Release date is Indeterminant.

6. Offense(s) for which you were convicted or pleaded guilty (all counts):
CT. 01. P187 Murder 1st, P12022.5 W/use of F'ARM. CT. 02. P187 Murder 1st, P12022.5 W/use of F'ARM. CT. 03. P187/664 Att.Murder, P12022.7 W/GBI.

7. What was your plea? (CHECK ONE)
   - (a) Not guilty ☒ XX
   - (b) Guilty ☐
   - (c) Nolo contendere ☐

8. If you pleaded not guilty, what kind of trial did you have? (CHECK ONE)
   - (a) Jury XX☐
   - (b) Judge only ☐

9. Did you testify at the trial?
☐ Yes ☒ XX No

## DIRECT APPEAL

10. Did you appeal from the judgment of conviction in the **California Court of Appeal**?
☐ Yes ☐ No " Petitioner is not challenging his conviction, he is challenging the "retroactive repeal" of a California statute."

11. If you appealed in the **California Court of Appeal**, answer the following:
   - (a) Result: N/A
   - (b) Date of result (if known): N/A
   - (c) Case number and citation (if known): N/A
   - (d) Names of Judges participating in case (if known): N/A
   - (e) Grounds raised on direct appeal: N/A

12. If you sought further direct review of the decision on appeal by the **California Supreme Court** (e.g., a Petition for Review), please answer the following:
   - (a) Result: N/A
   - (b) Date of result (if known): N/A
   - (c) Case number and citation (if known): N/A
   - (d) Grounds raised: N/A

13. If you filed a petition for certiorari in the **United States Supreme Court**, please answer the following with respect to that petition:
    (a) Result: N/A
    (b) Date of result (if known): N/A
    (c) Case number and citation (if known): N/A
    (d) Grounds raised: N/A

## COLLATERAL REVIEW IN STATE COURT

14. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions (e.g., a Petition for Writ of Habeas Corpus) with respect to this judgment in the **California Superior Court**?
XX Yes ☐ No

15. If your answer to #14 was "Yes," give the following information:
    (a) **California Superior Court** Case Number (if known): EHC00880
    (b) Nature of proceeding: Petition for Writ of Habeas Corpus
    (c) Grounds raised: Ex Post Facto violation of the State and Federal Constitutions. Retroactive repeal of California statute §2817. Board of Parole Hearings (BPH).
    (d) Did you receive an evidentiary hearing on your petition, application or motion?
    ☐ Yes XX No
    (e) Result:
    (f) Date of result (if known): N/A

16. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions (e.g., a Petition for Writ of Habeas Corpus) with respect to this judgment in the **California Court of Appeal**?
XX Yes ☐ No

**17.** If your answer to #16 was "Yes," give the following information:

(a) **California Court of Appeal** Case Number (if known): D051585

(b) Nature of proceeding: Petition for Writ of Habeas Corpus

(c) Names of Judges participating in case (if known) Justices Haller, Huffman and O'Rourke.

(d) Grounds raised: Ex Post Facto violation of the State and Federal Constitutions. Retroactive repeal of California statute §2817. Board of Parole Hearings (BPH)

(e) Did you receive an evidentiary hearing on your petition, application or motion?
☐ Yes ☒ No

(f) Result:

(g) Date of result (if known): N/A

**18.** Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions (e.g., a Petition for Writ of Habeas Corpus) with respect to this judgment in the **California Supreme Court**?
☒ Yes ☐ No

**19.** If your answer to #18 was "Yes," give the following information:

(a) **California Supreme Court** Case Number (if known): S158476

(b) Nature of proceeding: Petition for Writ of Habeas Corpus

(c) Grounds raised: Ex post Facto violation of the State and Federal Constitutions. Retroactive repeal of California statute §2817. Board of Parole Hearings (BPH).

(d) Did you receive an evidentiary hearing on your petition, application or motion?
☐ Yes ☒ No

(e) Result: N/A

(f) Date of result (if known): N/A

**20.** If you did ***not*** file a petition, application or motion (e.g., a Petition for Review or a Petition for Writ of Habeas Corpus) with the **California Supreme Court**, containing the grounds raised in this federal Petition, explain briefly why you did not: N/A

## COLLATERAL REVIEW IN FEDERAL COURT

**21.** Is this your **first** federal petition for writ of habeas corpus challenging this conviction?
XX Yes ☐ No (IF "YES" SKIP TO #22)

(a) If no, in what federal court was the prior action filed?
 (i) What was the prior case number?
 (ii) Was the prior action (CHECK ONE):
  Denied on the merits? ☐
  Dismissed for procedural reasons? ☐
 (iii) Date of decision:

(b) Were any of the issues in this current petition also raised in the prior federal petition?
☐ Yes ☐ No

(c) If the prior case was denied on the merits, has the Ninth Circuit Court of Appeals given you permission to file this second or successive petition?
☐ Yes ☐ No

**CAUTION:**

- **Exhaustion of State Court Remedies:** In order to proceed in federal court you must ordinarily first exhaust your state court remedies as to each ground on which you request action by the federal court. This means that even if you have exhausted some grounds by raising them before the California Supreme Court, you must first present ***all*** other grounds to the California Supreme Court before raising them in your federal Petition.
- **Single Petition:** If you fail to set forth all grounds in this Petition challenging a specific judgment, you may be barred from presenting additional grounds challenging the same judgment at a later date.
- **Factual Specificity:** You must state facts, not conclusions, in support of your grounds. For example, if you are claiming incompetence of counsel you must state facts specifically setting forth what your attorney did or failed to do. A rule of thumb to follow is — state who did exactly what to violate your federal constitutional rights at what time or place.

## GROUNDS FOR RELIEF

22. **State *concisely* every ground on which you claim that you are being held in violation of the constitution, law or treaties of the United States. Summarize *briefly* the facts supporting each ground.** (e.g. what happened during the state proceedings that you contend resulted in a violation of the constitution, law or treaties of the United States.) If necessary, you may attach pages stating additional grounds and/or facts supporting each ground.

**(a) GROUND ONE**: "Retroactive repeal of California statute §2817., eliminating (LWOP) review hearings previously available to petitioner under the repealed law alters provisions accorded by the California Legislature and is unconstitutional as an **ex post facto law**, as applied to petitioner, whose crime was committed (12) years before the statute was repealed."

**Supporting FACTS:** "On **January 1994**, the California Board of Parole Hearings (BPH) repealed California statute: **"California Code of Regulations (CCR), Board of Prison Terms. Title 15. Division 2. Chapter 7. Executive Clemency. Article 2. Traditional Pardon Procedures. §2817. Board Referral to Governor."** At the time petitioner's crime was committed, **(July 20, 1981)**, California statute §2817, was in effect requiring the California parole board to consider the application of any prisoner serving a sentence of life imprisonment without possibility of parole (LWOP) with no more than one felony conviction for recommendation and referral to the Governor for Commutation of Sentence. The repealed law required the board to consider petitioner's application (12) years after he was sentenced, and every (3) years thereafter. Since the repeal of §2817., the state has applied it not only to (LWOP) prisoners for crimes committed since its repeal on January 19, 1994, but also retroactively to all other (LWOP) prisoners, including petitioner, whose crime was committed (12) years before the effective date of the repealed law. The California board of parole hearings uses the repealed statute §2817. to deny petitioner (LWOP) review hearings to determine his suitability for commutation of sentence recommendation which was available to him under the repealed law. Thus, the retroactive application as applied to petitioner's case attaches legal consequences to his crime committed before the effective date of the repeal. The California board has deprived petitioner of opportunities established by statutory provisions prior to January 1994, and has increased petitioner's punishment beyond what was prescibed when his crime was consummated."

**Did you raise GROUND ONE in the California Supreme Court?**

XX Yes ☐ No.

If yes, answer the following:

(1) Nature of proceeding (i.e., petition for review, habeas petition): Habeas Petition

(2) Case number or citation: S158476

(3) Result (attach a copy of the court's opinion or order if available): Petition Denied. (refer to Exhibit "J").

**(b) GROUND TWO:** N/A

**Supporting FACTS:** N/A

**Did you raise GROUND TWO in the California Supreme Court?**

☐ Yes ☐ No.

If yes, answer the following:

(1) Nature of proceeding (i.e., petition for review, habeas petition):

(2) Case number or citation:

(3) Result (attach a copy of the court's opinion or order if available):

**(c) GROUND THREE:** N/A

**Supporting FACTS:** N/A

**Did you raise GROUND THREE in the California Supreme Court?**

☐ Yes ☐ No.

If yes, answer the following:

(1) Nature of proceeding (i.e., petition for review, habeas petition):

(2) Case number or citation:

(3) Result (attach a copy of the court's opinion or order if available):

(d) GROUND FOUR: N/A

**Supporting FACTS:** N/A

**Did you raise GROUND FOUR in the California Supreme Court?**

☐ Yes ☐ No.

If yes, answer the following:

(1) Nature of proceeding (i.e., petition for review, habeas petition):

(2) Case number or citation:

(3) Result (attach a copy of the court's opinion or order if available):

**23.** Do you have any petition or appeal **now pending** in any court, either state or federal, pertaining to the judgment under attack?
☐ Yes ☒ No

**24.** If your answer to #23 is "Yes," give the following information:

(a) Name of Court:

(b) Case Number:

(c) Date action filed:

(d) Nature of proceeding:

(e) Name(s) of judges (if known):

(f) Grounds raised:

(g) Did you receive an evidentiary hearing on your petition, application or motion?
☐ Yes ☐ No

**25.** Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:

(a) At preliminary hearing . . . . . . . . N/A

(b) At arraignment and plea . . . . . . . N/A

(c) At trial . . . . . . . . . . . . . . . . . . . . . N/A

(d) At sentencing . . . . . . . . . . . . . . . N/A

(e) On appeal . . . . . . . . . . . . . . . . . . In Pro Per

(f) In any post-conviction proceeding . In Pro Per

(g) On appeal from any adverse ruling in a post-conviction proceeding:
In Pro Per

**26.** Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time?
[ ] Yes [XX] No

**27.** Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?
[ ] Yes [XX] No

(a) If so, give name and location of court that imposed sentence to be served in the future:

(b) Give date and length of the future sentence:

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?
[ ] Yes [XX] No

**28.** Consent to Magistrate Judge Jurisdiction

In order to insure the just, speedy and inexpensive determination of Section 2254 habeas cases filed in this district, the parties may waive their right to procced before a district judge and consent to magistrate judge jurisdiction. Upon consent of all the parties under 28 U.S.C. § 636(c) to such jurisdiction, the magistrate judge will conduct all proceedings including the entry of final judgment. The parties are free to withhold consent without adverse substantive consequences.

The Court encourages parties to consent to a magistrate judge as it will likely result in an earlier resolution of this matter. If you request that a district judge be designated to decide dispositive matters, a magistrate judge will nevertheless hear and decide all non-dispositive matters and will hear and issue a recommendation to the district judge as to all dispositive matters.

You may consent to have a magistrate judge conduct any and all further proceedings in this case, including the entry of final judgment, by indicating your consent below.

Choose only one of the following:

[ ] Plaintiff consents to magistrate judge jurisdiction as set forth above.

**OR**

[XX] Plaintiff requests that a district judge be designated to decide dispositive matters and trial in this case.

**29.** Date you are mailing (or handing to a correctional officer) this Petition to this court:
JUNE 24, 2008

Wherefore, Petitioner prays that the Court grant Petitioner relief to which he may be entitled in this proceeding.

SIGNATURE OF ATTORNEY (IF ANY)

I declare under penalty of perjury that the foregoing is true and correct. Executed on

JUNE 24, 2008

(DATE)

Bruce Allen

SIGNATURE OF PETITIONER

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#C-61243
P.O. BOX 5005, FB01-113
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In Pro Per

2254 ✓ 1983
FILING FEE PAID
Yes ✓ No
IFP MOTION FILED
Yes No ✓
COPIES SENT TO
Court ✓ ProSe

FILED
JUN 24 2008
CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY DEPUTY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

In re

BRUCE ALLEN

On Habeas Corpus

No. '08 CV 1123 L CAB

Petition for Writ of Habeas Corpus and Memorandum of Points and Authorities in support Thereof.

UNDER 28 U.S.C. §2254
BY A PERSON IN STATE CUSTODY

## I.

## INTRODUCTION

At the time petitioner's crime was committed and at the time of his sentencing, California statutory provisions were in effect that required the California Board of Parole Hearings (BPH) to consider the application of any prisoner serving a sentence of life imprisonment without possibility of parole (LWOP) with no more than one felony conviction for referral to the Governor for commutation of sentence. The former law required the Board to consider petitioner's application twelve (12) years after he was sentenced, and every three (3) years thereafter.

On **January 19, 1994**, the California Board of Parole Hearings ["the Board"] hereinafter, repealed state statute **"California Code of Regulations (CCR), Board of Prison Terms. Title 15. Division 2. Chapter 7. Executive Clemency.**,

**Article 2. Traditional Pardon Procedures. §2817. Board Referral to Governor."** Petitioner contends that eligibility for mandatory LWOP review hearings was part of the law annexed to his crime when committed. Petitioner was sentenced to a term under statutory provisions making him eligible for mandatory LWOP review hearings to determine whether he is suitable for commutation of sentence. Elimination of mandatory LWOP review hearing eligibility that had been available to petitioner under the repealed statute changes the legal consequences of acts completed before the effective date of the statute's repeal. Petitioner further contends that no review hearing eligibility imposes a greater punishment beyond what was prescribed when his crime was committed and is unconstitutional as an **ex post facto** law as applied to petitioner, whose crime was committed (12) years before the statute's repeal. Retroactive application of the repealed statute to petitioner's case is an **ex post facto violation of the State and Federal Constitutions.** **Weaver v. Graham, 450 U.S. 24; Lindsey v. Washington, 301 U.S. 397; Greenfield v. Scafati, 277 F. Supp. 644; Calder v. Bull, 3 Dall.386, 390; In re Medley, 277 F. Supp., 646, supra, at 171; Rodriguez v. United States Parole Commission, 594 F.2d 170; Wolff v. McDonnell, 418 U.S. 539, 557; Warden v. Marrero, 417 U.S. 653, 658; United states v. De Simone, 468 F.2d 1196; Durant v. United States, 410 F.2d 689, 692; Dobbert v. Florida, supra, 432 U.S. 293-294; Cummings v. Missouri, 4 Wall. 277, 325-326; Rooney v. North Dakota, 196 U.S. 319, 324-325; the State and Federal Constitutions.**

## II.

## PARTIES

Petitioner BRUCE ALLEN, CDCR#: C-61243, is a prisoner of the State of California incarcerated at Calipatria State Prison. LARRY SMALL is the warden of Calipatria State Prison and the legal custodian of petitioner.

JAMES TILTON is the Director of the California Department of Corrections and Rehabilitation (CDCR) and is responsible for the operations of each of its State Prisons, including the operation of Calipatria State Prison.

## III.

## STATEMENT OF FACTS

1. Petitioner is a prisoner confined within the California Department of Corrections and Rehabilitation (CDCR) serving a sentence of life imprisonment without possibility of parole (LWOP) with no more than one felony conviction. I am a Fist Term commitment. My commitment offense date occurred on **July 20,** 1981. My sentencing date was on **February 16, 1983. (refer to Exhibit "A," and Exhibit "B,"** State of California Department of Corrections LEGAL STATUS document dated **05-13-83**, Dept. of Corrections Classification Chrono CDC-128G dated 03/18/08).

2. Petitioner's LWOP sentence is governed pursuant to California statutory law and the California Board of Parole Hearings administrative rules and regulatory policy in place at the time of my commitment offense date July 20, 1981. The Community Release Board (CRB), the California Parole Authority until the name was changed effective January 1, 1980, renamed the Board of Prison Terms (BPT), and then renamed again in 2006 as the present entity: **"The California Board of Parole Hearings (BPH),"** promulgated mandatory review hearing procedures for prisoners serving LWOP sentences with no more than one felony conviction to determine suitability for commutation of sentence and referral to Governor based upon statutory provisions and administrative rules prior to and after November 8, 1978.

3. The review hearing scheduling for LWOP prisoners pursuant to the Community Release Board (CRB) administrative rules and regulatory policy prior to and after (November 8, 1978 - Repealed January 19, 1994), Title 15. Crime Prevention and Corrections. Community Release Board. Article 2. Traditional Pardon Procedures. §2817. Board Referral to Governor, reads:

(a) Persons Considered. Prisoners serving sentences of life imprisonment without possibility of parole who have suffered no more than one felony conviction shall be considered by the board for possible referral to the Governor.

(b) Scheduling. The case of each prisoner serving a sentence of LWOP shall be reviewed twelve (12) years after reception and every third year thereafter.

(c) Panel. The hearing shall be conducted by a panel as designated by the chairman.

(d) Information considered. The hearing panel shall consider the information specified in §§ 2232-2238 and the summary prepared by department staff.

(e) Prisoners Rights. At this hearing the prisoner shall have the rights specified in §§ 2245-2255. The record shall be a written summary or a tape recording.

(f) Decision. The hearing panel shall determine whether the prisoner should be considered for commutation of sentence and for pardon. If the decision is to recommend commutation or pardon, department staff shall forward the record of the hearing and the panel's recommendations and reasons to the chairman, to the attention of the executive officer, for review. Note: Authority cited: Section 5076.2, Penal Code. Reference: Section 4801, Penal Code. (refer to Exhibit "C," Title 15. Crime Prevention and Corrections. Community Release Board. Article 2. Traditional Pardon Procedures. §2817(a) through (g). Board Referral to Governor. Register 78, No. 14- April 8, 1978, page 305-306).

4. On February 20, 1989, the Board gave public notice that it proposes to amend regulations in the Title 15. Division 2. of the California Code of Regulations. The proposed changes read: "After the Briggs Initiative: (Proposition 7, November 7, 1978 election), "[California, specifying new minimum eligible parole release dates for first and second degree murders, effective November 8, 1978]," the Board amended its rules to provide for (30) year review of Life Without the Possibility of Parole (LWOP) prisoners. Prior to that initiative, when the minimum eligible parole date (MEPD) for life prisoners was seven years, the review for (LWOP) was (12) years. The (30) year review was five years beyond the presumed (25) year (MEPD) under Briggs, as the (12) year had been five years beyond the former seven year (MEPD). While this regulatory change may or may not be subject to attack under the ex post facto clauses of the United States or California Constitutions, the Board has determined to provide the earlier review process for those whose commitment offense was prior to the effective date of the regulatory revision, September 12, 1982. This clarifies the regulatory policy as to whether or not the existing (30) year provision would apply to these offenders, and is consistent with Board policy changes based upon statutory provisions prior to and after November 8, 1978."

The change is proposed in order to implement, interpret, and make specific Sections 3052, 4801, 5076.1, and 5076.2 of the California Penal Code. (refer to Exhibit "D," ADMINISTRATIVE DIRECTIVE NO. 90/1. Notice of Proposed Changes in the Regulations of the Board of Prison Terms, 15 CCR, Division 2, Chapter 7, Executive Clemency. INITIAL STATEMENT OF REASONS, 1. §2817. Board Referral to Governor. Dated February 20, 1989, page 1-8).

5. The proposed regulatory changes were affirmed and promulgated as operative on December 26, 1990, and circulated as late as December 20, 1993. The regula-

tory revision California Code of Regulations (CCR) Title 15. Board of Prison Terms. Chapter 7. Executive Clemency. Article 2. Traditional Pardon Procedures. §2817 (a)(b)(d)(e)(5)(6)(f) Board Referral to Governor, reads:

(a) Persons considered. Prisoners serving sentences of life imprisonment without possibility of parole (LWOP) who have suffered no more than one felony conviction shall be considered by the board for possible referral to the Governor.

(b) Scheduling. The case of each prisoner serving a sentence of life without the possibility of parole described in (a) whose commitment offense was on or before September 11, 1982, shall be reviewed 12 years after reception and every third year thereafter. Those prisoners described in (a) whose commitment offense was after September 11, 1982, shall be reviewed 30 years after reception and every fifth year thereafter.

(d) Board Reports and Psychiatric or Psychological Evaluations. The Board Report for the review shall cover the period from CDC reception date to the review, and include material required for an initial life parole consideration hearing.

(e) Interview. At the interview the deputy commissioner shall:

(5) Evaluate the prisoner's psychiatric and psychological status and needs, taking into account all clinical reports to determine the risk to public safety if the prisoner were found suitable and released.

(6) Assess other factors which would justify consideration by a Board panel.

(f) Recommendations. The deputy commissioner shall complete a written report of the review interview, including comments, observations, evaluations, and his or her recommendation which shall be either: (1) no further action, or (2) refer for further consideration by the Board. The deputy commissioner shall document significant positive and/or negative chronological reports (chrono's), laudatory chrono's and completion of any major educational, vocational, or self-help programs. Note: Authority cited: Sections 3052 and 5076.2, Penal Code. Reference: Sections 4801 and 5076.1, Penal Code. **(refer to Exhibit "E," California Code of Regulations Title 15. Chapter 7. Executive Clemency. Article 2. Traditional Pardon Procedures. §2817 (a) through (h). Board Referral to Governor. Register 91, No.2: January 11, 1991, pages 105-**106).

6. On **January 19, 1994**, the Board repealed its **California Code of Regulations Title 15. Division 2. Executive Clemency. Chapter 7. Article 2. Traditional Pardon Procedures. §2817. Board Referral to Governor.** The prior content establishing the scheduling, review and referral process is no longer stated. The new version of §2817 does not compensate for the elimination of mandatory LWOP review hearing eligibility which had been available to petitioner under the old statute. **(refer to Exhibit "F," California Code of Regulations Title 15. Chapter 7. Executive Clemency. Article 2. Traditional Pardon Procedures. §2817. Board Referral to Governor. Repealer filed 12-20-93: operative 1-19-94, Register 93. No.52, page 105).**

7. I have been incarcerated within the California Department of Corrections and Rehabilitation (CDCR) for over a period of (25) successive years. I have never been provided a post-conviction review hearing by the Board to determine whether I am suitable for commutation of sentence in accordance with statutory provisions and administrative rules in place at the time of my commitment offense date July 20, 1981.

The scheduling of my review hearings should have proceeded along the following chronological time frames: "My term started on **February 22, 1983;** Twelve (12) years after reception initial review hearin date, **February 22, 1995;** every third year thereafter initial review hearing date, **February 22, 1998;**

**February 22, 2001; February 22, 2004; February 22, 2007."**

IV.

**EXHAUSTION OF ADMINISTRATIVE REMEDIES**

8. On **May 11, 2004**, the Board released a memorandum which gave notice to the Elimination of Board of Prison Terms Inmate Appeal Process. The Board announced that any inmate desiring to appeal a discretionary act by the Board must file directly with the court. **(refer to Exhibit "G," Department of Corrections Memorandum dated May 11,2004).**

9. On **June 18, 2007**, petitioner filed a petition for Writ of Habeas Corpus with the Superior Court of California County of Imperial seeking relief. The petition was denied on August 20, 2007. **(refer to Exhibit "H," Court Order).**

10. On **September 10, 2007**, petitioner filed a petition for Writ of Habeas Corpus with the Fourth District Court of Appeal, Division One seeking relief. The petition was denied on September 20, 2007. **(refer to Exhibit "I," Court Order).**

11. On **November 26, 2007**, petitioner filed a petition for Writ of Habeas Corpus with the California State Supreme Court seeking relief. The petition was denied on May 14, 2008. **(refer to Exhibit "J," Court Order).**

12. Since February 22, 1995, through February 22, 2007, petitioner has relied upon the authority and integrity of the California Board of Parole Hearings to fulfill its statutory duties and administrative responsibilities through procedural process, but to no avail. Due to vagaries within the prison system only now have I been able to petition the Honorable Court for relief.

V.

CONTENTIONS

I.

13. Petitioner contends that the retroactive application of the repealed California statute **California Code of Regulations (CCR), Board of Prison Terms. Title 15. Division 2. Executive Clemency. Chapter 7. Article 2. Traditional Pardon Procedures. §2817. Board Referral to Governor.**, eliminating mandatory LWOP review hearing eligibility that had been available to petitioner under the repealed statute changes the legal consequences of acts completed before the effective date of the statute's repeal. Petitioner contends that eligibility for mandatory LWOP review hearings was part of the law annexed to his crime when committed. Petitioner was sentenced to a term under statutory provisions making him eligible for mandatory LWOP review hearings to determine whether he is suitable for commutation of sentence. Petitioner further contends that no review hearing eligibility imposes a greater punishment beyond what was prescribed when his crime was committed and is unconstitutional as an **ex post facto** law as applied to petitioner, whose crime was committed (12) years before the statute's repeal. Retroactive application of the repealed statute to petitioner's case is an **ex post facto violation of the State and Federal Constitutions.** **Weaver v. Graham, 450 U.S. 24; Lindsey v. Washington, 301 U.S. 397; Greenfield v. Scafati, 277 F. Supp. 644; Calder v. Bull, 3 Dall. 386, 390; In re Medley, 277 F. Supp., 646, supra, at 171; Rodriguez v. United States Parole Commission, 594 F.2d 170; Wolff v. McDonnell, 418 U.S. 539, 557; Warden v. Marrero, 417 U.S. 653, 658; United States v. De Simone, 468 F.2d 1196; Durant v. United States, 410 F.2d 689, 692; Dobbert v. Florida, supra, 432 U.S. 293-294; Cummings v. Missouri, 4 Wall. 277, 325-326; Rooney v. North Dakota, 196 U.S. 319, 324-325; the State and Federal Constitutions.**

VI.

**PRAYER FOR RELIEF**

14. Petitioner is without remedy save by writ of habeas corpus. WHEREFORE, petitioner prays the court:

1. Declare the **ex post facto violation** in petitioner's case.

2. Order the California Board of Parole Hearings to immediately schedule petitioner for a LWOP review hearing, and subsequent mandatory review hearings in accordance with statutory laws and administrative rules in place at the time of his commitment offense **July 20, 1981**, and conduct the hearing in accordance with the substantive criteria established by the state to determine whether petitioner is suitable for recommendation for commutation of sentence.

3. Order the California Board of Parole Hearings to comply with the mandates of California state statutes and Constitutional law.

4. Grant any other relief this court deems just, proper, and equitable.

Dated: JUNE 24, 2008

Respectfully submitted,

Bruce Allen

In Pro Per
BRUCE ALLEN, CDCR#: C-61243
P.O. BOX 5005, FB01-113
Calipatria, California 92233

VII.

**VERIFICATION**

I, BRUCE ALLEN state:

I am the petitioner in this action. I have read the foregoing petition for writ of habeas corpus and the facts stated therein are true of my own knowledge, except as to matters that are therein stated on my own information and belief, and as to those matters I believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed at Calipatria State Prison (CSP-CAL) On JUNE 24, 2008 in the city of Calipatria California.

Signature: Bruce Allen

In Pro Per
BRUCE ALLEN
CDCR#: C-61243
P.O. BOX 5005, FB01-113
Calipatria, California 92233

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| Department of Corrections Memorandum., Exhibit "G." Elimination of Board of Prison terms Inmate Appeals Process, dated May 11, 2004. | 8 |

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# MEMORANDUM OF LAW

## I.

1. In order for a criminal or penal law to be ex post facto, it must be retrospective, applying to events occurring before its enactment, and must disadvantage the offender affected by it. U.S.C.A. Const. Art. 1, §10, cl. 1.

2. In applying the ex post facto clause, the relevant date is that on which the offense was committed. U.S.C.A. Const. Art. 1, §9, cl. 3.

3. Even if a statute merely alters penal provisions accorded by the legislature, it violates the ex post facto clause if it is both retrospective and more onerous than the law in effect on the date of the offense. U.S.C.A. Const. Art. 1, §10, cl. 1.

4. Retrospective change that significantly reduces offender's opportunity to shorten his prison term is sufficiently disadvantageous to violate the Ex Post Facto Clause. U.S.C.A. Const. Art. 1, §9. cl. 3.

5. Under California law, a convicted person's eligibility for parole consideration (as opposed to parole) is part of the "law annexed to the crime when committed" within meaning of ex post facto principle, and any legislative change in such eligibility which would work to a prisoner's disadvantage may not be retroactively applied. U.S.C.A. Const. Art. 1, §9, cl. 3.

6. The existence of the old statute, **Community Release Board. Title 15. Crime Prevention and Corrections. Article 2. Traditional Pardon Procedures. §2817. Board Referral to Governor.**, (Exhibit "C"), at the time of petitioner's commitment offense served as an "operative fact." The state statute in place

on both the date of petitioner's offense and the date of his sentencing provided a formula for statutory requirements regarding the "eligibility and frequency" of mandatory LWOP review hearings to determime his suitability for commutation of sentence and referral to the Governor. The statute prescribed "when, and how often" a LWOP prisoner "shall" be provided review hearings to determine suitability for commutation of sentence and referral to the Governor. According to the formula:

(a) Persons Considered. "Prisoners serving sentences of life imprisonment without possibility of parole who have suffered no more than one felony conviction shall be considered by the board for possible referral to the Governor."

(b) Scheduling. "The case of each prisoner serving a sentence of life without the possibility of parole shall be reviewed twelve years after reception and every third year thereafter."

(f) Decision). "The hearing panel shall determine whether the prisoner should be considered for commutation of sentence and for pardon...." (refer to Exhibit "C").

7. The Board's regulatory revision of September 12, 1982, "fixing" the earlier LWOP review hearing requirements to apply to petitioner "who has no more than one felony conviction, whose commitment offense was prior to the effective date of the regulatory revision (September 12, 1982)," corroborates the law in effect and applicable to petitioner's case on the date of his commitment offense July 20, 1981. (refer to Exhibit "D," ADMINISTRATIVE DIRECTIVE NO. 90/1. Notice of Proposed Changes in the Regulations of the Board of Prison Terms, 15 CCR, Division 2. Chapter 7. Executive Clemency. INITIAL STATEMENT OF REASONS, 1. §2817. Board Referral to Governor., dated February 20, 1989, pages 1-8).

8. The former law was repealed on January 19, 1994, and since that time the state has applied it not only to LWOP prisoners sentenced for crimes committed since its repeal in 1994, but also retroactively to all other LWOP prisoners, including petitioner, whose offense took place (12) years before the statute was repealed.

9. The repealed state statute §2817 has retrospective consequences because it eliminated an established "statutorily mandated time table for LWOP review hearing eligibility and frequency of hearings to determine suitability for commutation of sentence and referral to the Governor that was available to petitioner under the statute in existence when his crime was committed." It applies not only prospectively, but also to prisoners convicted for acts committed before the law's effective repeal date. The retroactive application of the repealed statute substantially alters the legal consequences attached to petitioner's crime already completed, changing the quantum of punishment, and has been applied to petitioner to his detriment. Weaver v. Graham, 450 U.S. 24, 962; Lindsey v. Washington, 301 U.S. 397, 401; Calder v. Bull, 3 Dall.386, 390; Dobbert v. Florida, supra, 432 U.S. 293-294.

II.

10. The United States Supreme Court has previously recognized that a prisoner's eligibility for reduced imprisonment is a significant factor entering into both the defendant's decision to plea bargain and the judge's calculation of the sentence to be imposed. Wolff v. McDonnell, 418 U.S. 539, 557; Warden v. Marrero, 417 U.S. 653, 658; United States v. De Simone, 468 F.2d 1196; Durant v. United States, 410 F.2d 689, 692.

11. The opportunity to obtain commutation of sentence through rehabilitation

was apparent in the fact that the statutorily mandated §2817 review process existed as California law. The fact that the ultimate commutation is subject to the veto power of the Governor does not dissolve the substantial opportunity which existed for petitioner under the repealed law. **(refer to Exhibit "C").** The current recommendations for parole for all life sentences under the "Briggs Initiative: Proposition 7, November 7, 1978, California general election, specifying new minimum eligible parole release dates for first and second degree murders, effective November 8, 1978," is subject to the arbitrary veto power of the Governor of California, and such veto power has no diminishing effect on the prisoner's opportunity to gain freedom from custody and control prior to the expiration of their maximum term.

12. **Life imprisonment without possibility of parole LWOP is a technical term, with peculiar meaning in California law.** Both the 1977 California state statute and the 1978 "Briggs Initiative" provide that the alternative to death is life imprisonment without possibility of parole. However, the 1978 initiative requires the jury to be instructed that a sentence of life imprisonment without possibility of parole may be commuted or modified by the Governor to a sentence that includes the possibility of parole.

The "real consequences" of such sentence include possibilities of gubernatorial pardon or commutation of sentence. By applying the review process to a specific class of LWOP prisoners "(Lwop prisoners who have suffered no more than one felony conviction shall be considered by the board for possible referral to the Governor - First Term prisoners, **refer to Exhibit "C"**), the California legislature expressed their intent that First Term prisoners "shall" receive the opportunity to qualify for, and achieve commutation of sentence.

**California Penal Code** §190.3 reads: "The trier of fact shall be instructed that a sentence of confinement to state prison for a term of life without the possibility of parole may in future after sentence is imposed, be commuted or modified to a sentence that includes the possibility of parole by the governor of the state of California."

California Penal Code §4801 reads: "The Community Release Board may report to the Governor from time to time the names of any and all persons imprisoned in any state prison who, in its judgment, ought to have a commutation of sentence or be pardoned and set at liberty on account of good conduct, or unusual term of sentence, or any other cause which, in their opinion, should entitle the prisoner to a pardon or commutation of sentence."

The legislative intent with respect to the former law "Title 15. Community Release Board. Article 2. §2817. Board Referral to Governor, (a) through (g), refer to Exhibit "C," is fully set forth in the act. For those LWOP prisoners whose commitment offense was prior to the effective date of the Board's regulatory revision, September 12, 1982, the Board is required to provide the earlier review process to the extent that the penalty thereunder was less stringent, so as to avoid ex post facto consequences, and otherwise applying the review process called for under the law in order to give effect to the ameliorative attitude expressed by the legislature in enacting it.

Retroactive elimination of mandatory LWOP review hearing eligibility precluding future consideration nullifies the legislature's intent that prisoners, particularly "First Termers," who demonstrate a receptiveness to reform and a disposition toward rehabilitation should receive the opportunity to shorten their time in prison. The prospect of commutation of sentence is in fact one determinant of petitioner's prison term - and that his effective sentence is altered once this determinant is changed. Lindsey v. Washington, 301 U.S. at 401-402; Greenfield v. Scafati, 277 F.Supp. 664; Rodriguez v. United States Parole Commission, 594 F.2d 170.

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III.

13. The California legislative intent using mandatory language in its statutory scheme provided petitioner opportunities to gain commutation of sentence through the mechanism of mandatory LWOP review hearings for LWOP prisoners who have suffered no more than one felony conviction.
The retroactive application of the repealed law §2817. Board Referral to Governor., in petitioner's case completely altering the method by which he can gain commutation of sentence increases the punishment beyond what was prescibed when his crime was consummated.
The ex post facto prohibition forbids the Congress and the States to enact any law "which imposes a punishment for an act which was not punishable at the time it was committed; or imposes additional punishment to that then prescribed." Cummings v. Missouri, 4 Wall. 277, 325-326; Lindsey v. Washington, 301 U.S. 397, 401; Rooney v. North Dakota, 196 U.S. 319, 324-325; In re Medley, 134 U.S. 160, 171; Calder v. Bull, 3 Dall. 386, 390.

14. The United States Supreme Court has analyzed the ex post facto clause within the context of a statute which altered the availability of "gain time for good conduct." In Weaver v. Graham, the Florida courts had denied weaver habeas corpus relief on the grounds that the allowances of such time "is an act of grace rather than a vested right and may be withdrawn, modified or denied." (Id., at p. 28, 101 S.Ct. at 963.) The high court corrected that interpretation, noting that "...our decisions prescibe that two critical elements be presented for a criminal or penal law to be **ex post facto**: it must be retrospective, that is, it must apply to events occurring before its enactment, and it must disadvantage the offender affected by it. [citations.] Contrary to the reasoning of the Supreme Court of Florida, a law need not impair a 'vested right' to violate the ex post facto prohibition." (ID., at

p. 29, 101 S.Ct. at 964, fns.omitted.)
Weaver thus quickly disposes of the people's claim that because no parole date had been set before the change in guidelines that defendant had no "vested right" to which the bar against ex post facto law attached. The high court responded to such an argument by saying: "the presence or absence of an affirmative, enforceable right is not relevant.... Critical to relief under the Ex Post Facto Clause is not an individual's right to less punishment, but the lack of fair notice and governmental restraint when the legislature increases punishment beyond what was prescribed when the crime was consummated." (450 U.S. at p. 30, 101 S.Ct. at p. 965.)
In brief, "the critical question is whether the law changes the legal consequences of acts completed before its effective date." (Id., at p. 31, 101 S.Ct. at p. 965.) The Supreme Court concluded that it was unnecessary for it to decide whether the prospect of gain-time was technically part of the inmate's sentence in order "to conclude that it in fact is one determinant of petitioner's prison term - and that his effective sentence is altered once this determinant is changed." (Id., at p. 32, 101 S.Ct. at p. 966.)
The high tribunal thus held that the alteration in the method of awarding gain time, even though the change authorized extra gain-time through exemplary conduct at the discretion of the authorities, constituted an impermissible ex post facto law as to petitioner because it circumscribed his opportunities to gain early release and therefore made his punishment more onerous. (Id., at p.36, 101 S.Ct. at p. 968.) Weaver v. Graham, 450 U.S. 24.

15. The legislative history of the Parole Commission and Reorganization Act indicates that Congress viewed the possibility of parole as an element of the "punishment" annexed to any crime: "Determinations of just punishment are part of the parole process." H.R. Rep. No. 94-838 (Conference Report),

94th Cong., 2d Sess. 26, reprinted in [1976] U.S. Code Cong. & Admin.News, pp. 351, 358.

The ex post facto clause looks to the standard of punishment precribed by a statute, rather than to the sentence actually imposed. In Warden v. Marrero, the United States Supreme Court analyzed a case which repealed 26 USCS §7237(d), containing a parole eligibility provision for narcotics offenders; the court held, among other things, that the "no-parole" provision of 26 U.S.C.S. §7237(d) (1964 ed. and Supp.V) was a "penalty, forfeiture, or liability" within the meaning of I U.S.C. §109, and therefore the repeal of §7237(d) did not make prisoners sentenced under that provision eligible for parole. The court relied primarily on the legislative history of §7237(d), which indicated "that Congress meant ineligibility for parole to be treated as part of the punishment," id. at 662, 94 S.Ct. at 2537, annexed to the crimes for which the prisoners in that case had been convicted. Thus, it appears not only that Congress views the possibility of parole as an element of "punishment," but also that Congress sometimes denies that possibility to make more severe the punishment technically prescribed.

In Warden v. Marrero, the court also pointed out two "additional reasons for believing that the no-parole provision is an element of... punishment:"

> First, only an unusual prisoner could be expected to think that he was not suffering a penalty when he was denied eligibility for parole .... Second, a repealer of parole eligibility previously available to imprisoned offenders would clearly present the serious question under the ex post facto clause of Art. I, §9, cl. 3, of whether it imposed a greater or more severe punishment than was prescribed by law at the time of the.. offense,....

Id. at 662-663, 94 S.Ct. at 2538 (emphasis in original; citations omitted). Eligibility in the abstract is useless; only an unusual prisoner could be expected to think that he is not suffering a penalty when even though he is eligible for parole and might be released if granted a hearing, he is denied that hearing. Denial of any meaningful opportunity for parole by retroactive application of the Parole Commission's rule violates the ex post facto clause of the Federal Constitution. Warden v. Marrero, 417 U.S. 653.

16. In Greenfield v. Scafati, the United States Supreme Court affirmed the judgment of a three-judge District Court which found an ex post facto violation in an amended Massachusetts statute forbidding a prisoner from earning good conduct deductions and the possibility of earlier release. The court held that "It is true that parole is commonly spoken of as a matter of grace, and not of right. It would be more accurate, however, to say that a prisoner's entitlement to parole lies in the descretion of the parole board. It would not follow because a prisoner might not receive parole that it would not be an unlawful ex post facto burden to deprive him altogether of the right to be found qualified. Rather, we see no distinction between depriving a prisoner of the right to earn good conduct deductions and the right to qualify for, and hence earn, parole. Each, to quote In re Medley, supra, materially "alters the situation of the accused to his disadvantage." Greenfield v. Scafati, 277 F.Supp., at 646; In re Medley, supra, at 171, 10 S.Ct., at 387.

17. The facts remain that under the California statute in existence when petitioner's crime was committed he was provided substantial opportunities through the statutory scheme requiring that "Prisoners serving sentences of life imprisonment without possibility of parole who have suffered no more than one felony conviction shall be considered by the board for possible referral to the Governor," through the mechanism of mandatory review hearings effective (12) years after reception within the California Department of Corrections

and Rehabilitation (CDCR) and every (3) years thereafter to be found qualified for, and hence earn, commutation of sentence and gain freedom from custody and control prior to the expiration of his maximum term. Petitioner is entitled to have his application for those benefits duly considered.

It is clearly affirmative that the retroactive application of the repealed California statute §2817.(a) through (g) (1978) applies to prisoners convicted for acts committed before the effective date of the repeal of the provision. The state of California uses the repealed §2817.(a) through (g), which was repealed on **January 19, 1994**, to deny petitioner LWOP review hearings to determine his suitability for commutation of sentence recommendation which was available to petitioner under the former statute, who was convicted of a crime occurring on **July 20, 1981**. Thus, the retroactive application as applied to petitioner's case attaches legal consquences to a crime committed before the effective date of the repeal.

The retroactive application of the repealed California statute §2817.(a) through (g), as applied to petitioner's case is entirely restrictive, because the opportunities to present petitioner's rehabilitative achievements directly to the California Board of Parole Hearings in a legal forum (review hearings) conducive to determining petitioner's suitability for commutation of sentence recommendation under provisions of law applicable to him prior to January 19, 1994, have been extinguished, and the deprivation of review hearings is not offset by any new opportunities to qualify for commutation of sentence.

It is plainly to the substantial disadvantage of petitioner to be deprived of all opportunities previously available to him under the former statute and as part of his original sentence to be found qualified for, and hence earn, commutation of sentence in accordance with the expressed intent of the California Legislature.

The California Board's retroactive repeal of the California statute §2817. (a) through (g) (1978), as applied to petitioner's case depriving him of LWOP review hearings previously available to him alters provisions accorded by the California Legislature prior to January 19, 1994.

The replacement of mandatory review hearings with "no" review hearings increases petitioner's punishment beyond what was prescribed when the crime was consummated and is unconstitutional as an **ex post facto law** as applied to petitioner, whose crime was committed (12) years before the statute was repealed.

## Conclusion

For the reasons recounted above, the relief sought in the petition should be granted.

Dated: JUNE 24, 2008

Respectfully Submitted,

Bruce Allen

In Pro Per
BRUCE ALLEN
CDCR#: C-61243
P.O. BOX 5005, FB01-113
Calipatria, California 92233

CDC #: C61243 NAME: ALLEN HOUSING: B1-129U CDC 128-G
PS: 52 LEVEL: IV LWOP: CUSTODY: MED-A
WG/PG: A1A EFF. 12-18-96 NEXT CLASSIFICATION: 4/09 ASSIGNMENT: CLK%B.630

**ACTION: ANNUAL REVIEW: PRELIMINARY SCORE REMAINS 0. PS REMAINS AT 52 DUE TO LWOP STATUS. REAFFIRM MED-A CUSTODY AND WG/PG A1A EFFECTIVE 12-18-96. RETAIN CAL-IV AND CPP. DOUBLE CELL CLEAR. NO MHSDS, MDO, DDP OR DPP ISSUES NOTED.**

Inmate ALLEN made a personal appearance before Facility B, UCC for the purpose of an Annual Review. Committee notes Inmate is assigned to CLK%B.630. Inmate's RGPL is 12.9. The review periods considered for this annual review were 3-1-07 through 2-29-08. He received 2 Average or above Average Work Performance Reports. He remained disciplinary free during this review period. Inmate is to be commended for his positive programming. His Preliminary score remains at 0. However his PS remains at 52 due to the Mandatory Minimum for his LWOP Status. After a review of the C-File, it was noted that the Last 128-G which lists full case factors is dated 12-15-05. Committee notes all case factors remain the same with the exception of an updated TB code of 22 per 128-C dated 3-13-07. Committee notes Inmate Allen requested to be afforded the opportunity to receive Vocational Training as well as an in level transfer. These requests were denied for the following reasons, Calipatria no longer allow Inmates serving a term of LWOP access to Vocational Trades due to the escape risk and the Department of Corrections is not transferring in-level Inmates unless it is for disciplinary or medical reasons. After a review of all case factors, committee elects to REAFFIRM PRELIMINARY SCORE AT 0. PS REMAINS AT 52 DUE TO LWOP STATUS. REAFFIRM MED-A CUSTODY AND WG/PG A1A EFFECTIVE 12-18-96. RETAIN CAL-IV AND CPP. Inmate meets the criteria for placement in a 270 designed institution. Inmate is not eligible for MSF, CCRC, MCCF, CCF, Camp, or Restitution Center due to Life Sentence and Violence. Inmate does not meet the MDO referral criteria. The inmate is not a participant in the MHSDS, DDP or the DPP. Inmate's case was reviewed for double cell housing and was found suitable for double cell housing with no special restrictions because there is no history of in-cell violence or aggression toward other Inmates. A current CDC 1882 is in the Inmate's C-File. CDC 840, 812, 127 and Minimum Screening forms are current. Inmate Allen was advised of his right to appeal and informed that this Committee will act as his first level of appeal. His next Annual Review is scheduled for 4/09. There are no other concerns noted. (ka)

J. T. KELLERMAN, FC CHAIRPERSON

K. Atkins
K. ATKINS, CCI RECORDER

**Committee Members:** J. T. Kellerman, FC; J. Anaya, CCII; K. Atkins, CCI
**cc:** CCI, Inmate
**Date:** 3-18-08

**UNIT CLASSIFICATION COMMITTEE**

**INST: CAL IV**

COPY GIVEN TO INMATE ON 4/24/08 CCI K. Atkins

EXHIBIT "A"

EXHIBIT "B"

STATE OF CALIFORNIA DEPARTMENT OF C

LEGAL STATUS

| CDC NUMBER | ALPHA ID | NAME | TERM STARTS | |
|---|---|---|---|---|
| C-61243 | | ALLEN, Bruce | 02-22-83 | |

| MAX. RELEASE DATE | MIN. RELEASE DATE | MIN. ADJ. RELEASE DATE GT CR LOST/AT LARGE/BAIL | PAROLE PERIOD |
|---|---|---|---|
| LWO | LWO | | N/A |

BASE TERM LWO + ENHANCEMENTS 02-00 = TOTAL TERM LWO-02

GOOD TIME CREDITS AVAILABLE (2931 PC) (PC ______ BC ______) = ______

PRE PRISON CREDITS: CASE NO. LA A023609

| | |
|---|---|
| 2900.5 PC | 576 |
| 1202.03 PC | |
| 2900.1 PC | |
| CRC | |
| Mental Health | |
| 4019 PC | 288 |
| 2931 PC | |
| Post Sentence | 05 |

TOTAL PRE PRISON CREDITS (DAYS) 869

REGISTRATION REQUIRED PER ______

| DATE REC'D | CO. CASE NO. | CT. | CODE & OFFENSE | TYPE WPN. | DATE OF OFFENSE | SENTENCE DATE |
|---|---|---|---|---|---|---|
| CONTROLLING PRINCIPAL AND CONSECUTIVE (INCLUDING ENHANCEMENT) OFFENSE(S): | | | | | | |
| 02-22-83 | LA A023609 | 01 | P187 MURDER 1st | | 07-20-81 | 02-16-83 |
| | | | LWO S/C 190.2(a)(17) PC | | | |
| | | | P12022.5 W/USE OF F'ARM | SHOTGUN | | |
| NON CONTROLLING OFFENSE | | | | | | |
| 02-22-83 | LA A023609 | 02 | P187 MURDER 1st | | 07-20-81 | 02-16-83 |
| | | | LWO S/C 190.2(a)(17) PC | | | |
| | | | P12022.5 W/USE OF F'ARM | SHOTGUN | | |
| | | 03 | P187/664 ATT MURDER | SHOTGUN | 07-20-81 | |
| | | | P12022.7 W/GBI | | | |

ALLEN C-61243 LPU 05-13-83 MM/af

NAME

EXHIBIT "C"

## Article 2. Traditional Pardon Procedures

2815. **General.** The procedures in this article apply to persons sentenced to life imprisonment without possibility of parole, to persons residing outside of California, and to persons discharged or released on parole before May 13, 1943.

2816. **Application Direct to Governor.** (a) **Persons Eligible.** The following persons shall apply directly to the Governor: persons residing outside California, persons discharged or released on parole prior to May 13, 1943, and persons serving sentences of life imprisonment without possibility of parole who have suffered more than one felony conviction.

(b) **Board Investigation.** Upon request of the Governor the board shall investigate and report on any application for reprieves, pardons and commutations of sentence. The board shall consider the application, the transcripts of judicial proceedings and all documents submitted with the application. Investigators for the board may take testimony, examine witnesses under oath and take all action necessary to conduct a full and complete investigation of the application. The board may require the court in which the conviction was had or the district attorney who prosecuted the action, to furnish it immediately with a summary of the facts proved at trial, any other facts relevant to issuing or denying the pardon, and any recommendations, including the reasons, concerning granting or denying the pardon.

2817. **Board Referral to Governor.** (a) **Persons Considered.** Prisoners serving sentences of life imprisonment without possibility of parole who have suffered no more than one felony conviction shall be considered by the board for possible referral to the Governor.

(b) **Scheduling.** The case of each prisoner serving a sentence of life without the possibility of parole shall be reviewed twelve years after reception and every third year thereafter.

(c) **Panel.** The hearing shall be conducted by a panel as designated by the chairman.

(d) **Information Considered.** The hearing panel shall consider the information specified in §§ 2232–2238 and the summary prepared by department staff.

(e) **Prisoner Rights.** At this hearing the prisoner shall have the rights specified in §§ 2245–2255. The record shall be a written summary or a tape recording.

(f) **Decision.** The hearing panel shall determine whether the prisoner should be considered for commutation of sentence and for pardon. If the decision is to recommend commutation or pardon, department staff shall forward the record of the hearing and the panel's recommendations and reasons to the chairman, to the attention of the executive officer, for review.

Page 1 of 2

EXHIBIT "C"

(g) **Review by Chairman.** The chairman will review the case and either disagree with or concur in the panel's recommendation. If the chairman disagrees the prisoner shall be informed in writing of the decision and the reasons. If the chairman concurs in the panel's recommendation, the case will be presented to the board at its next regularly scheduled clemency calendar.

NOTE: Authority cited: Section 5076.2, Penal Code. Reference: Section 4801, Penal Code.

*History:* 1. Amendment of subsections (e) and (f) and new subsection (g) filed 4-4-78; effective thirtieth day thereafter (Register 78, No. 14).

2818. **Board Recommendation.** In all cases referred to the board for investigation by the Governor or the hearing panel, the full board shall consider the recommendation to be made to the Governor regarding pardon and/or commutation. The recommendation of a majority of the full board shall be the board's recommendation to the Governor. If the case was referred by a hearing panel and the board does not recommend pardon, the board shall not refer the case to the Governor but shall provide the prisoner with its reasons for not recommending pardon.

2819. **Governor's Action.** (a) Notice. Unless there is imminent danger that the applicant will die or unless the applicant's term is within ten days of expiration, ten days before the Governor acts on the application the applicant shall notify the district attorney of the county in which he was prosecuted of his intention to apply for a pardon.

(b) **Supreme Court Recommendation.** All cases in which the board has recommended the issuance of a pardon and cases in which the Governor, despite an unfavorable recommendation by the board, especially refers an application, shall be referred to the Supreme Court, including all papers and documents relied upon in support of or opposition to the pardon. If a majority of the Court recommends pardon and/or commutation of sentence, the clerk of the Supreme Court shall return the application and all documents to the Governor who may issue the pardon. If a majority of the Supreme Court does not recommend the issuance of the pardon and/or commutation of sentence, the documents shall remain in the files of the Supreme Court.

PAGE 2 OF 2

(Next page is 401)

EXHIBIT "D"

BOARD OF PRISON TERMS
545 Downtown Plaza, Suite 200
Sacramento, California 95814

February 20, 1989

ADMINISTRATIVE DIRECTIVE NO. 90/1

SUBJECT: Notice of Proposed Changes in the Regulations of the Board of Prison Terms, 15 CCR, Division 2, Chapter 7, Executive Clemency

NOTICE OF PROPOSED CHANGES IN THE REGULATIONS OF THE BOARD OF PRISON TERMS

Notice is hereby given that the Board of Prison Terms proposes to amend regulations in Title 15, Division 2 of the California Code of Regulations. Penal Code Sections 3052 and 5076.2 authorize the Board to take this action.

The change is proposed in order to implement, interpret, and make specific Sections 3052, 4801, 5076.1, and 5076.2 of the Penal Code.

The general public is invited to comment on the proposed changes outlined in the Informative Digest, and may submit written statements on or before April 30, 1990.

A public hearing is scheduled for April 30, 1990, pursuant to Government Code Section 11346.8. Any interested person or his or her duly authorized representative may attend.

# INITIAL STATEMENT OF REASONS

1. §2817. Board Referral to Governor. After the Briggs Initiative (Proposition 7, November 7, 1978 election), the Board amended its rules to provide for 30 year review of Life Without the Possibility of Parole (LWOP) prisoners. Prior to that initiative, when the minimum eligible parole date (MEPD) for life prisoners was seven years, the review for LWOP was 12 years. The 30 year review was five years beyond the presumed 25 year MEPD under Briggs, as the 12 year had been five years beyond the former seven year MEPD. While this regulatory change may or may not be subject to attack under the ex post facto clauses of the United States or California Constitutions, the Board has determined to provide the earlier review process for those whose commitment offense was prior to the effective date of the regulatory revision, September 12, 1982. This clarifies the regulatory policy as to whether or not the existing 30 year provision would apply to these offenders, and is consistent with Board policy changes based upon statutory provisions prior to and after November 8, 1978.

Existing subdivision (c) refers to §§2232 to 2238 as information considered by the hearing panel in this process. Sections 2232 to 2234 have been repealed by the Office of Administrative Law, and the remaining sections are limiting as opposed to affirmatively stating information to be considered.

Subdivision (c) as proposed would specify a "screening" process to precede a hearing which would be held only under specified circumstances. It would also include relevant rights for prisoners now set forth in subdivision (d). All of these rights, specified by cross-references to other sections, would remain the same except the right to a departmental representative. This right (§2252) was intended for life prisoner progress hearings and is not appropriate in the proposed review procedure. The cross-reference to §2254, record of hearing, is also removed. Section 2254 only specifies that there shall be a record permitting a transcript, tape recording, or written summary. Proposed section (g) would mandate a written summary, one of the options in existing §2254. The specification of the record is covered in proposed subdivision (f). Subdivision (c) further clarifies that the screening is an interview and file review conducted by a deputy commissioner selected by the chairperson.

Proposed Changes in Regulations

1. Amend Section 2817 to read:

**2817. Board Referral to Governor.**

(a) Persons Considered. Prisoners serving sentences of life imprisonment without possibility of parole who have suffered no more than one felony conviction shall be considered by the board for possible referral to the Governor.

(b) Scheduling. The case of each prisoner serving a sentence of life without the possibility of parole ~~shall be reviewed thirty years after reception and every fifth year thereafter.~~ described in (a) whose commitment offense was on or before September 11, 1982, shall be reviewed 12 years after reception and every third year thereafter. Those prisoners described in (a) whose commitment offense was after September 11, 1982, shall be reviewed 30 years after reception and every fifth year thereafter.

~~(c) Information Considered. The hearing panel shall consider the information specified in Sections 2232-2238 and the summary prepared by department staff and any other relevant information.~~

(c) LWOP Documentation Review. The review shall consist of an interview and review of the central file and relevant documents conducted by one deputy commissioner designated by the chairperson. Although this is not a "hearing," the prisoner shall have the relevant rights specified in §§2245-2251, 2253, and 2255.

~~(d) Prisoner Rights. At this hearing the prisoner shall have the rights specified in Sections 2245-2255. The record shall be a written summary or a tape recording.~~

(d) Board Reports and Psychiatric or Psychological Evaluations. - The Board Report for the review shall cover the period from CDC reception date to the review, and include material required for an initial life parole consideration hearing. The preparing counselor shall carefully consider commitment factors, including the crime and the reason the court imposed the LWOP term, any additional commitment counts, prior social and criminal history, programming and adjustment in prison and any evidence of significant change which might justify, now or in the future, gubernatorial consideration. The Department of Corrections shall also provide a psychiatric or psychological evaluation in the same format as that provided in life parole consideration hearings.

~~(e) Decision. The hearing panel shall determine whether the prisoner should be considered for commutation of sentence and for pardon.~~

~~If the decision is to recommend commutation or pardon, department staff shall forward the record of the hearing and the panel's recommendations and reasons to the chairman, to the attention of the executive officer, for review.~~

(e) Interview. At the interview the deputy commissioner shall:

(1) Discuss with the prisoner the purpose of the review and subsequent actions should a favorable recommendation be made.

(2) Review with the prisoner the Board Report and the prisoner's view of time in prison.

(3) Evaluate social and criminal history and causative factors which led to the life crime. Evaluate the prisoner's attitude toward his or her crime and sentence.

(4) Evaluate: (A) progress made in prison and efforts toward self-help or understanding, rehabilitation; (B) concern for other people; (C) restitution or other evidence of remorse; and (D) the prisoner's disciplinary record with reference to understanding and self-control.

(5) Evaluate the prisoner's psychiatric and psychological status and needs, taking into account all clinical reports to determine the risk to public safety if the prisoner were found.

EXHIBIT "D"

suitable and released.

(6) Assess other factors which would justify consideration by a Board panel.

Proposed recommendations and the reasons therefore shall be shared with the prisoner.

(f) Recommendation. The deputy commissioner shall complete a written report of the review interview, including comments, observations, evaluations, and his or her recommendation which shall be either: (1) no further action, or (2) refer for further consideration by the Board. The deputy commissioner shall document significant positive and/or negative chronos, laudatory chronos and completion of any major educational, vocational, or self-help programs.

(g) Board Review. The written report will be the record of the interview. The report and a copy of the prisoner's file shall be transmitted to the Central Office for review by the executive officer and chairperson. A copy of the report shall be transmitted to the prisoner. The executive officer shall comment and recommend approval or disapproval. Upon approval by the chairperson, the recommendation is effective.

(h) Post Approval/Disapproval Procedures.

(1) If the approved recommendation is that no further action be taken, all documents shall be returned to the Central File, and further review scheduled in accordance with subparagraph (b). If the chairperson disapproves a recommendation of no further review, he or she shall select a different deputy commissioner to perform a new review in accordance with these regulations.

(2) If the approved recommendation is further review by the Board, the executive officer shall schedule the matter for a Clemency Review Hearing on the Life Parole Consideration calendar and refer the case to the chief investigator to obtain the additional information specified in subdivision (c) of §2817.1

NOTE: Authority cited: Sections 3052 and 5076.2, Penal Code. Reference: Sections 4801 and 5076.1, Penal Code.

2817.1 Board Hearing, Clemency.

(a) This hearing is conducted by a three person panel which shall include at least two commissioners.

(b) The prisoner shall have the rights specified in §§2245-2251, 2253 and 2255. The record shall be a tape recording.

(c) The panel shall consider the documents set forth in subdivision (c) of §2817, the written summary resulting from the interview in subdivision (f) of §2817, and the report of the chief investigator, including statements, reports, and/or letters obtained from the judge of the superior court before whom the prisoner was tried, the district attorney of the county in which the offense was committed, the attorney who represented the prisoner at trial, the law enforcement agency that investigated the case, and, where the prisoner was convicted of the murder of a peace officer, the law enforcement agency which had employed the peace officer at the time of the murder, victims, next of kin of deceased victims, and any written comments from the public. The recommendation shall be by a majority vote. If the recommendation is "no further action," that decision is effective upon completion of review under §2041, and all material shall be returned to the prisoner's Central File. If the recommendation is "submit for further review for clemency consideration, en banc," the recommendation will be forwarded to the executive officer, who shall schedule the case for an en banc hearing.

NOTE: Authority cited: Sections 3052 and 5076.2, Penal Code. Reference: Sections 4801 and 5076.1, Penal Code.

EXHIBIT "D"

2. Amend Section 2818 to read:

**2818. Board Recommendation.**

Prior to en banc consideration the executive officer shall assign a deputy commissioner or the chief investigator or his or her designee to complete a background investigation and submit a written report.

In all cases referred to the board for investigation by the Governor or the hearing panel, the full board shall consider the recommendation to be made to the Governor regarding pardon and/or commutation. The recommendation of a majority of the full board shall be the board's recommendation to the Governor. If the case was referred by a hearing panel and the board does not recommend pardon, the board shall not refer the case to the Governor but shall provide the prisoner with its reasons for not recommending pardon.

NOTE: Authority cited: Sections 3052 and 5076.2, Penal Code. Reference: Sections 4801 and 5076.1, Penal Code.

EXHIBIT "E"

of the circumstances and gravity of the parole violation, or because of prior criminal history.

NOTE: Authority cited: Section 5076.2, Penal Code. Reference: Section 3057, Penal Code.

HISTORY

1. New section filed 12-7-87 as an emergency; operative 12-7-87 (Register 87, No. 50). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 4-6-88.
2. Repealed by operation of Government Code Section 11346.1(g) (Register 89, No. 8).
3. New section filed 2-1-89; operative 2-1-89 (Register 89, No. 8).

# Chapter 7. Executive Clemency

## Article 1. Certificate of Rehabilitation

HISTORY

1. Repealer of Article 1 (Sections 2800-2807) filed 8-12-82; effective thirtieth day thereafter (Register 82, No. 33).

## Article 2. Traditional Pardon Procedures

### § 2815. General.

The procedures in this article apply to persons sentenced to life imprisonment without possibility of parole, to persons residing outside of California, and to persons discharged or released on parole before May 13, 1943.

### § 2816. Application Direct to Governor.

(a) Persons Eligible. The following persons shall apply directly to the Governor: persons residing outside California, persons discharged or released on parole prior to May 13, 1943, and persons serving sentences of life imprisonment without possibility of parole who have suffered more than one felony conviction.

(b) Board Investigation. Upon request of the Governor the board shall investigate and report on any application for reprieves, pardons and commutations of sentence. The board shall consider the application, the transcripts of judicial proceedings and all documents submitted with the application. Investigators for the board may take testimony, examine witnesses under oath and take all action necessary to conduct a full and complete investigation of the application. The board may require the court in which the conviction was had or the district attorney who prosecuted the action, to furnish it immediately with a summary of the facts proved at trial, any other facts relevant to issuing or denying the pardon, and any recommendations, including the reasons, concerning granting or denying the pardon.

### § 2817. Board Referral to Governor.

(a) Persons Considered. Prisoners serving sentences of life imprisonment without possibility of parole (LWOP) who have suffered no more than one felony conviction shall be considered by the board for possible referral to the Governor.

(b) Scheduling. The case of each prisoner serving a sentence of life without the possibility of parole described in (a) whose commitment offense was on or before September 11, 1982, shall be reviewed 12 years after reception and every third year thereafter. Those prisoners described in (a) whose commitment offense was after September 11, 1982, shall be reviewed 30 years after reception and every fifth year thereafter.

(c) LWOP Documentation Review. The review shall consist of an interview and review of the central file and relevant documents conducted by one deputy commissioner designated by the chairperson. Although this is not a "hearing", the prisoner shall have the relevant rights specified in sections 2245-2251, 2253, and 2255.

(d) Board Reports and Psychiatric or Psychological Evaluations. The Board Report for the review shall cover the period from CDC reception date to the review, and include material required for an initial life parole consideration hearing. The preparing counselor shall carefully consider commitment factors, including the crime and the reason the court imposed the LWOP term, any additional commitment counts, prior social and criminal history, programming and adjustment in prison and any evidence of significant change which might justify, now or in the future, gubernatorial consideration. The Department of Corrections shall also provide a psychiatric or psychological evaluation in the same format as that provided in life parole consideration hearings.

(e) Interview. At the interview the deputy commissioner shall:

(1) Discuss with the prisoner the purpose of the review and subsequent actions should a favorable recommendation be made.

(2) Review with the prisoner the Board Report and the prisoner's view of time in prison.

(3) Evaluate social and criminal history and causative factors which led to the life crime. Evaluate the prisoner's attitude toward his or her crime and sentence.

(4) Evaluate: (A) progress made in prison and efforts toward self-help or understanding, rehabilitation; (B) concern for other people; (C) restitution or other evidence of remorse; and (D) the prisoner's disciplinary record with reference to understanding and self-control.

(5) Evaluate the prisoner's psychiatric and psychological status and needs, taking into account all clinical reports to determine the risk to public safety if the prisoner were found suitable and released.

(6) Assess other factors which would justify consideration by a Board panel.

Proposed recommendations and the reasons therefor shall be shared with the prisoner.

(f) Recommendation. The deputy commissioner shall complete a written report of the review interview, including comments, observations, evaluations, and his or her recommendation which shall be either: (1) no further action, or (2) refer for further consideration by the Board. The deputy commissioner shall document significant positive and/or negative chronological reports (chronos), laudatory chronos and completion of any major educational, vocational, or self-help programs.

(g) Board Review. The written report will be the record of the interview. The report and a copy of the prisoner's file shall be transmitted to the Central Office for review by the executive officer and chairperson. A copy of the report shall be transmitted to the prisoner. The executive officer shall comment and recommend approval or disapproval. Upon approval by the chairperson the recommendation is effective.

(h) Post Approval/Disapproval Procedures.

(1) If the approved recommendation is that no further action be taken, all documents shall be returned to the Central File, and further review scheduled in accordance with subparagraph (b). If the chairperson disapproves a recommendation of no further review, he or she shall select a different deputy commissioner to perform a new review in accordance with these regulations.

(2) If the approved recommendation is further review by the Board, the executive officer shall schedule the matter for a Clemency Review Hearing on the Life Parole Consideration calendar and refer the case to the chief investigator to obtain the additional information specified in subdivision (c) of section 2817.1

NOTE: Authority cited: Sections 3052 and 5076.2, Penal Code. Reference: Sections 4801 and 5076.1, Penal Code.

HISTORY

1. Amendment of subsections (e) and (f) and new subsection (g) filed 4-4-78; effective thirtieth day thereafter (Register 78, No. 14).
2. Amendment of subsection (b) filed 8-12-82; effective thirtieth day thereafter (Register 82, No. 33).
3. Repealer of subsection (c) and relettering of subsections (d)-(g) to subsections (c)-(f) filed 12-22-82 by OAL pursuant to Government Code Section 11349.7(j) (Register 82, No. 52).
4. Repealer of subsection (f) filed 3-7-84; effective thirtieth day thereafter (Register 84, No. 10).
5. Amendment filed 11-13-85; effective thirtieth day thereafter (Register 85, No. 46).

PAGE 1 OF 2

6. Amendment of subsections (a) and (b) and Authority Note, repeal and new subsections (c)–(e), and new subsections (f)–(h) filed 11–26–90; operative 12–26–90 (Register 91, No. 2).

## § 2817.1. Board Hearing, Clemency.

(a) This hearing is conducted by a three person panel which shall include at least two commissioners.

(b) The prisoner shall have the rights specified in sections 2245–2251, 2253 and 2255. The record shall be a tape recording.

(c) The panel shall consider the documents set forth in subdivision (c) of section 2817, the written summary resulting from the interview in subdivision (f) of section 2817, and the report of the chief investigator, including statements, reports, and/or letters obtained from the judge of the superior court before whom the prisoner was tried, the district attorney of the county in which the offense was committed, the attorney who represented the prisoner at trial, the law enforcement agency that investigated the case, and, where the prisoner was convicted of the murder of a peace officer, the law enforcement agency which had employed the peace officer at the time of the murder, victims, next of kin of deceased victims, and any written comments from the public. The recommendation shall be by a majority vote. If the recommendation is "no further action," that decision is effective upon completion of review under section 2041, and all material shall be returned to the prisoner's Central File. If the recommendation is "submit for further review for clemency consideration, *en banc*," the recommendation will be forwarded to the executive officer who shall schedule the case for an *en banc* hearing.

NOTE: Authority cited: Sections 3052 and 5076.2, Penal Code. Reference: Sections 4801 and 5076.1, Penal Code.

HISTORY

1. New section filed 11–26–90; operative 12–26–90 (Register 91, No. 2).

## § 2818. Board Recommendation.

Prior to *en banc* consideration the executive officer shall assign a deputy commissioner or the chief investigator or his or her designee to complete a background investigation and submit a written report.

In all cases referred to the board for investigation by the Governor or the hearing panel, the full board shall consider the recommendation to be made to the Governor regarding pardon and/or commutation. The recommendation of a majority of the full board shall be the board's recommendation to the Governor. If the case was referred by a hearing panel and the board does not recommend pardon, the board shall not refer the case to the Governor but shall provide the prisoner with its reasons for not recommending pardon.

NOTE: Authority cited: Sections 3052 and 5076.2, Penal Code. Reference: Sections 4801 and 5076.1, Penal Code.

HISTORY

1. New undesignated first sentence and NOTE filed 11–26–90; operative 12–26–90 (Register 91, No. 2).

## § 2819. Governor's Action.

HISTORY

1. Repealer filed 3–7–84; effective thirtieth day thereafter (Register 84, No. 10).

of the circumstances and gravity of the parole violation, or because of prior criminal history.

NOTE: Authority cited: Section 5076.2, Penal Code. Reference: Section 3057, Penal Code.

HISTORY

1. New section filed 12-7-87 as an emergency; operative 12-7-87 (Register 87, No. 50). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 4-6-88.
2. Repealed by operation of Government Code Section 11346.1(g) (Register 89, No. 8).
3. New section filed 2-1-89; operative 2-1-89 (Register 89, No. 8).

# Chapter 7. Executive Clemency

## Article 1. Certificate of Rehabilitation

HISTORY

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## Article 2. Traditional Pardon Procedures

### § 2815. General.

The procedures in this article apply to persons sentenced to life imprisonment without possibility of parole, to persons residing outside of California, and to persons discharged or released on parole before May 13, 1943.

### § 2816. Application Direct to Governor.

(a) Persons Eligible. The following persons shall apply directly to the Governor: persons residing outside California, persons discharged or released on parole prior to May 13, 1943, and persons serving sentences of life imprisonment without possibility of parole who have suffered more than one felony conviction.

(b) Board Investigation. Upon request of the Governor the board shall investigate and report on any application for reprieves, pardons and commutations of sentence. The board shall consider the application, the transcripts of judicial proceedings and all documents submitted with the application. Investigators for the board may take testimony, examine witnesses under oath and take all action necessary to conduct a full and complete investigation of the application. The board may require the court in which the conviction was had or the district attorney who prosecuted the action, to furnish it immediately with a summary of the facts proved at trial, any other facts relevant to issuing or denying the pardon, and any recommendations, including the reasons, concerning granting or denying the pardon.

### § 2817. Board Referral to Governor.

NOTE: Authority cited: Sections 3052 and 5076.2, Penal Code. Reference: Sections 4801 and 5076.1, Penal Code.

HISTORY

1. Amendment of subsections (e) and (f) and new subsection (g) filed 4-4-78; effective thirtieth day thereafter (Register 78, No. 14).
2. Amendment of subsection (b) filed 8-12-82; effective thirtieth day thereafter (Register 82, No. 33).
3. Repealer of subsection (c) and relettering of subsections (d)–(g) to subsections (c)–(f) filed 12-22-82 by OAL pursuant to Government Code Section 11349.7(j) (Register 82, No. 52).
4. Repealer of subsection (f) filed 3-7-84; effective thirtieth day thereafter (Register 84, No. 10).
5. Amendment filed 11-13-85; effective thirtieth day thereafter (Register 85, No. 46).
6. Amendment of subsections (a) and (b) and Authority Note, repeal and new subsections (c)–(e), and new subsections (f)–(h) filed 11-26-90; operative 12-26-90 (Register 91, No. 2).
7. Repealer filed 12-20-93; operative 1-19-94 (Register 93, No. 52).

### § 2817.1. Board Hearing, Clemency.

NOTE: Authority cited: Sections 3052 and 5076.2, Penal Code. Reference: Sections 4801 and 5076.1, Penal Code.

HISTORY

1. New section filed 11-26-90; operative 12-26-90 (Register 91, No. 2).
2. Repealer filed 12-20-93; operative 1-19-94 (Register 93, No. 52).

### § 2818. Board Recommendation.

Prior to *en banc* consideration the executive officer shall assign a deputy commissioner or the chief investigator or his or her designee to complete a background investigation and submit a written report.

In all cases referred to the board for investigation by the Governor, the full board shall consider the recommendation to be made to the Governor regarding pardon and/or commutation. The recommendation of a majority of the full board shall be the board's recommendation to the Governor. If the case was referred by a hearing panel and the board does not recommend pardon, the board shall not refer the case to the Governor but shall provide the prisoner with its reasons for not recommending pardon.

NOTE: Authority cited: Sections 3052 and 5076.2, Penal Code. Reference: Sections 4801 and 5076.1, Penal Code.

HISTORY

1. New undesignated first sentence and NOTE filed 11-26-90; operative 12-26-90 (Register 91, No. 2).
2. Amendment filed 12-20-93; operative 1-19-94 (Register 93, No. 52).

### § 2819. Governor's Action.

HISTORY

1. Repealer filed 3-7-84; effective thirtieth day thereafter (Register 84, No. 10).

EXHIBIT "F"

* * *

State of California

Department of Corrections

# Memorandum

EXHIBIT "G"

Garcia

Date : May 11, 2004

To: Regional Administrators, Institutions Division
Wardens
Parole Region Administrators
Classification and Parole Representatives
Correctional Counselor IIIs-Reception Centers

Subject: ELIMINATION OF BOARD OF PRISON TERMS INMATE APPEALS PROCESS

Effective May 1, 2004, the Board of Prison Terms (BPT) will cease to process inmate appeals except as explained below. All institutions, parole offices, inmate law libraries, and restricted housing units shall post notices (as attached) so as to be readily available to inmates or parolees. Copies of this memorandum and attachments shall be provided to all supervising Correction Counselors II for inclusion in their desk copy of Title 15, Division II.

Administrative Directive 04/01 (attached) announces that inmate appeals will no longer be accepted for processing unless submitted before May 1. In accordance with the Americans With Disabilities Act of 1990, Armstrong v. Schwarzenegger Remedial Plan, and Valdivia v. Schwarzenegger, inmates with verified disabilities may continue to submit grievances using a BPT Form 1074 or a letter and these will be answered. Any inmate desiring to appeal a discretionary act by the Board must file directly with the court. Due process, grant of parole, attorneys appointed for a hearing, witnesses, early discharge, or good cause decisions, etc., all are "discretionary." Non-discretionary acts of the Board will be answered on a correspondence "quality control" basis only. Clerical errors, mistakes, credit eligibility, rules of law are all non-discretionary.

Important to note: This announcement makes no change to the appeal process within the California Department of Corrections.

CHERYL PLILER
Deputy Director
Institutions Division

Attachments

cc: J. S. Woodford
Rosanne Campbell
E. A. Mitchell
Jan Sale
Richard A. Rimmer
John Dovey
Wendy Still
Kathleen Keeshen
Ombudsmen's Office
Michael B. Neal
Steven Moore
Frank E. Renwick
Suzan L. Hubbard
Nola Grannis

EXHIBIT "H"

**FILED**

AUG 20 2007

SUPERIOR COURT CAL. IMPERIAL COUNTY JOSE O. GUILLEN CLERK. BY ______ DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF IMPERIAL

| | |
|---|---|
| In re: BRUCE ALLEN, On Habeas Corpus. | Case No. EHC00880<br>**ORDER DENYING PETITION FOR WRIT OF HABEAS CORPUS** |

Petitioner, an inmate at Calipatria State prison, instituted this action on June 18, 2007. Petitioner alleges *ex post facto* concerns about changes in the wall regarding the procedure for the Board of prison terms to refer to the Governor petitions for clemency.

The petition is denied for fire to comply with California Rule of Court 4.551(a)(1) which requires that habeas corpus petitions be on the approved Judicial Council form. Although petitioner included the form, petitioner has, essentially, used the form is a mere coversheet for manuscript petition. The use of the form is mandatory as it forces a petitioner to make prominent his essential allegations. More importantly, it forces a petitioner to separate factual allegations from legal argument. Of course, in the event that the form does not have sufficient space for the necessary allegations, an attachment to that portion of the form may be used.

For the foregoing reasons, the petition is DENIED without consideration on the merits.

DATED: August 20, 2007

JEFFREY B. JONES
Judge of the Superior Court

EXHIBIT "H"

COURT OF APPEAL - FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

FILED
Stephen M. Kelly, Clerk
SEP 20 2007
Court of Appeal Fourth District

| | |
|---|---|
| In re BRUCE ALLEN<br>on<br>Habeas Corpus. | D051585<br>(Imperial County<br>Super. Ct. No. EHC 00880) |

THE COURT:

The petition for writ of habeas corpus has been read and considered by Justices Haller, Huffman and O'Rourke.

Petitioner indicates he was sentenced in Los Angeles County, which is within the Second Appellate District. Petitioner has filed at least one prior petition in that district, No. B031533, which was heard and denied by order. Because the instant petition appears to challenge petitioner's sentence, and the Second Appellate District has previously heard at least one petition in petitioner's case, we deny the petition without prejudice to filing in that district. (See *In re Roberts* (2005) 36 Cal.4th 575, 586-593.)

Haller

HALLER, Acting P. J.

Copies to: All parties

EXHIBIT "I"

**S158476**

# IN THE SUPREME COURT OF CALIFORNIA

**En Banc**

---

In re BRUCE ALLEN on Habeas Corpus

---

The petition for writ of habeas corpus is denied.

SUPREME COURT
FILED

MAY 14 2008

Frederick K. Ohlrich Clerk

Deputy

EXHIBIT "J"

GEORGE

Chief Justice

# PROOF OF SERVICE BY MAIL

(C.C.P. SEC.1013 (a) & 2015.5; 28 U.S.C. SEC.1746)

I, BRUCE ALLEN , AM A RESIDENT OF CALIPATRIA STATE PRISON, IN THE COUNTY OF IMPERIAL, STATE OF CALIFORNIA. I AM OVER THE AGE OF EIGHTEEN (18) YEARS OF AGE AND ARE A PARTY OF THE ABOVE ENTITLED ACTION. MY STATE PRISON ADDRESS IS : P.O. BOX 5005. CALIPATRIA, CALIFORNIA 92233.

ON JUNE 23, 2008 I SERVED THE FOREGOING: PETITION for WRIT of HABEAS CORPUS under 28 U.S.C. §2254.

ON THE PARTY (S) HEREIN BY PLACING A TRUE COPY (S) THEREOF, ENCLOSED IN A SEALED ENVELOPE (S), WITH POSTAGE THEREON FULLY PAID, IN THE UNITED STATES MAIL, IN A DEPOSIT BOX SO PROVIDED AT CALIPATRIA STATE PRISON, CALIPATRIA, CALIFORNIA 92233.

OFFICE OF THE ATTORNEY GENERAL
110 West A Street, Suite 1100
P.O. BOx 85266
San Diego, CA 92186-5266

THERE IS DELIVERY SERVICE BY UNITED STATES MAIL AT THE PLACE SO ADDRESSED, AND THERE IS REGULAR COMMUNICATION BY MAIL BETWEEN THE PLACE OF MAILING AND THE PLACE SO ADDRESSED. I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

DATE: JUNE 23, 2008

Bruce Allen
(DECLARANT)
BRUCE ALLEN
#C-61243
P.O. BOX 5005, FB01-113
Calipatria, CA 92233

JS44

(Rev. 07/89)

# CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE SECOND PAGE OF THIS FORM.)

2254 ✓ 1983
FILING FEE PAID
Yes ✓ No
IFP MOTION FILED
Yes No
COPIES SENT TO
Court ✓ ProSe

FILED
JUN 24 2008
CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY [signature] DEPUTY

**I (a) PLAINTIFFS**

**Bruce Allen**

**DEFENDANTS**

**James Tilton, et al**

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF **Imperial**
(EXCEPT IN U.S. PLAINTIFF CASES)

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

**Bruce Allen**
**PO Box 5005**
**Calipatria, CA 92233**
**C-61243**

ATTORNEYS (IF KNOWN)

**'08 CV 1123 L CAB**

**II. BASIS OF JURISDICTION (PLACE AN x IN ONE BOX ONLY)**

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III

**III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN X IN ONE BOX (For Diversity Cases Only) FOR PLAINTIFF AND ONE BOX FOR DEFENDANT**

| | PT | DEF | | PT | DEF |
|---|---|---|---|---|---|
| Citizen of This State | ☐1 | ☐1 | Incorporated or Principal Place of Business in This State | ☐4 | ☐4 |
| Citizen of Another State | ☐2 | ☐2 | Incorporated and Principal Place of Business in Another State | ☐5 | ☐5 |
| Citizen or Subject of a Foreign Country | ☐3 | ☐3 | Foreign Nation | ☐6 | ☐6 |

**IV. CAUSE OF ACTION (CITE THE US CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY).**

**28 U.S.C. 2254**

**V. NATURE OF SUIT (PLACE AN X IN ONE BOX ONLY)**

**CONTRACT**
- ☐ 110 Insurance
- ☐ Marine
- ☐ Miller Act
- ☐ Negotiable Instrument
- ☐ 150 Recovery of Overpayment &Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excl. Veterans)
- ☐ 153Recovery of Overpayment of Veterans Benefits
- ☐ 160 Stockholders Suits
- ☐ Other Contract
- ☐ 195 Contract Product Liability

**TORTS**

PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury

PERSONAL INJURY
- ☐ 362 Personal Injury-Medical Malpractice
- ☐ 365 Personal Injury - Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

**FORFEITURE/PENALTY**
- ☐ 610 Agriculture
- ☐ 620 Other Food & Drug
- ☐ 625 Drug Related Seizure of Property 21 USC881
- ☐ 630 Liquor Laws
- ☐ 640 RR & Truck
- ☐ 650 Airline Regs
- ☐ 660 Occupational Safety/Health
- ☐ 690 Other

LABOR
- ☐ 710Fair Labor Standards Act
- 720 Labor/Mgmt. Relations
- ☐ 730 Labor/Mgmt. Reporting & Disclosure Act
- ☐ 740 Railway Labor Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Empl. Ret. Inc. Security Act

**BANKRUPTCY**
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 840 Trademark

SOCIAL SECURITY
- ☐ 861 HIA (13958)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

FEDERAL TAX SUITS
- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS - Third Party 26 USC 7609

**OTHER STATUTES**
- ☐ 400 State Reappointment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce/ICC Rates/etc.
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced and Corrupt Organizations
- ☐ 810 Selective Service
- ☐ 850 Securities/Commodities Exchange
- ☐ 875 Customer Challenge 12 USC
- ☐ 891 Agricultural Acts
- ☐ 892 Economic Stabilization Act
- ☐ 893 Environmental Matters
- ☐ 894 Energy Allocation Act
- ☐ 895 Freedom of Information Act
- ☐ 900 Appeal of Fee Determination Under Equal Access to Justice
- ☐ 950 Constitutionality of State
- ☐ 890 Other Statutory Actions

**REAL PROPERTY**
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Eiectmant
- ☐ 240 Tort to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

**CIVIL RIGHTS**
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/Accommodations
- ☐ 444 Welfare
- ☐ 440 Other Civil Rights

**PRISONER PETITIONS**
- ☐ 510 Motions to Vacate Sentence Habeas Corpus
- ☒ 530 General
- ☐ 535 Death Penalty
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights

**VI. ORIGIN (PLACE AN X IN ONE BOX ONLY)**

☒ 1 Original Proceeding ☐ 2 Removal from State Court ☐ 3 Remanded from Appelate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

**VII. REQUESTED IN COMPLAINT:** ☐ CHECK IF THIS IS A CLASS ACTION UNDER f.r.c.p. 23 **DEMAND $** Check YES only if demanded in complaint: **JURY DEMAND:** ☐ YES ☐ NO

**VIII. RELATED CASE(S) IF ANY (See Instructions):** JUDGE Docket Number

DATE 6/24/2008 ~~SIGNATURE OF ATTORNEY OF RECORD~~

152236 $5.00
TB 06/24/08

[signature]

**UNITED STATES**
**DISTRICT COURT**
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION

**# 152236 - MB**

**June 24, 2008**
**16:02:56**

**Habeas Corpus**
USAO #.: 08CV1123 PRISONER PETITION
Judge..: M. JAMES LORENZ
Amount.: $5.00 MO
Check#.: 12324790181

**Total-> $5.00**

FROM: BRUCE ALLEN VS JAMES TILTON, E